IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 129 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC : Appellant.

Versus

MOHANLAL HARGOVANDAS JARIWALA: Respondents.

Appearance:

MR PRANAV G DESAI for appellant.
MR NM KAPADIA for Respondent No. 1
NOTICE SERVED for Respondent No. 4
SERVED BY AFFIX.(N) for Respondent No. 6
MR RAJNI H MEHTA for Respondent No. 7

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 20/04/2000

ORAL JUDGEMENT (Per: H.R. Shelat, J.)

This appeal is directed against the judgment and

award dated 29th February 1980 passed by the then learned Chairman of the Motor Accident Claims Tribunal (Main) at Surat in M.A.C.P. No. 210 of 1978 on his file awarding the compensation of Rs. 1,11,100/= against the total claim of Rs. 4,50,000/=.

2. The facts, giving rise to the present appeal, may, in brief, be stated. Pravinchandra Babubhai who lost the life in motor accident was as alleged by the claimants plying the rickshaw during night time and during day time he was dealing in cold drinks in the name and style `Vandana Cold Drinks'. Whatever he was earning was being consumed in the maintenance of the family members. On 28th May 1978 at 10.00 A.M. carrying the passengers in the rickshaw Pravinbhai Babubhai was going from Kamrej to Surat city. Kirtikumar, his wife Pratibhaben and Kanakben, his minor daughter were the passengers in the rickshaw. When the rickshaw reached near the sign board of Village Laskana on Kamrej-Surat road, Yakubkhan Mohamedkhan, the respondent No.4 was coming from the opposite direction driving the mini luxury bus No. GTE 6020 belonging to the present appellant. He was driving the bus on the wrong side of the road at the excessive speed dangerous to the human life as a result he collided against the rickshaw, with the result Kiritkumar, Pritibhaben, & Kanakben sustained injuries and succumbed to the injuries at the spot. Pravinchandra Babubhai who was driving the rickshaw sustained injuries and succumbed to the injuries during the medical treatment in the hospital. Babubhai Kishandas Shah and Tapiben Babubhai, who are the parents of deceased Pravinchandra (rickshaw driver), preferred M.A.C.P. No. 35 of 1979 in the Motor Accident Claims Tribunal at Surat for compensation of Rs. 35,000/=, while Vandanaben, the minor daughter of Pravinkumar who was at the time of accident aged about 4 years, filed M.A.C.P. No. 36 of 1979 for compensation of Rs. 95,000/=. The Tribunal appreciating the evidence before it in all awarded Rs. 72,200/= and apportioned the same amongst the claimants of the two petitions, Rs. 34,000/= came to be awarded to the father and mother who are the claimants in M.A.C.P. No. 35 of 1979 and Rs. 48,200/= came to be awarded to Vandanaben, the petitioner in M.A.C.P. No. 36 of 1979. The father, mother and brother of deceased Kiritkumar filed M.A.C.P. No. 210 of 1978 for compensation as they lost not only Kiritkumar aged 29 but his wife Pratimaben and his daughter Kanakben. An award for Rs. 1,11,100/- against the claim of Rs. 4,50,000/- came to be passed. The appellant, joined as opponent No.2 in the Motor Accident Claim Petition No. 210 of 1978, feeling aggrieved by the award

passed, has preferred this appeal.

3. The learned advocate representing the appellant assails the judgment and award on the ground of negligence, while, Mr. Kapadia, the learned advocate representing the claimants, who are the father, mother and brother of deceased Kirtikumar, assails the award on the ground of negligence and also on quantum. We will first deal with the question about negligence.

4. Assailing the judgments and award, the learned advocate for the appellant submits that the Tribunal fell into error in holding that both the drivers were equally responsible because both were negligently driving their respective vehicles. The Tribunal considering the evidence on record ought to have held the deceased Pravinbhai who was driving the rickshaw solely responsible for the accident. The bus driver was driving the bus at the moderate speed remaining on the left side of the road but as deceased Pravinbhai was driving the rickshaw at the hectic speed he could not control the rickshaw and went on the wrong side with the result he collided against the front left hand side portion of the bus and then went off the road on the northern side. The rickshaw then came to a halt in the ditch.

5. Considering the rival contentions, two points arise for our consideration, one regarding negligence, and second regarding the quantum of compensation. Firstly, we will deal with the question regarding negligence. Reading the panchnama Ex.93 which was drawn by the police during the course of the investigation after the complaint was lodged by the bus driver and also the evidence of Dr. Chandravadan Harishankar Pandya who was proceeding ahead of the bus driving his scooter, it becomes clear that the road in question is East to West in length. The total width of the road is 20 feet. On both the sides of the road, there are shoulders each having the width of about 3 feet. The bus was proceeding towards East as it was going to the Surat city. Hence the correct side of the bus was northern half of the road. The rickshaw was going towards Kamrej, i.e., towards western direction. Its correct side was therefore the southern half of the road. Reading the evidence on record, it is difficult to locate the impact point on the road and therefore we are left to have a reasonable guess work from the materials on record. It may be stated that the left hand side front portion of the bus was found damaged when the panchnama was drawn and the front part of the rickshaw was found damaged. However, the panchnama also shows that front and back

portion of the rickshaw was also found damaged. It may be because the rickshaw was rolled down into the pit on the northern side of the road, but initially it seems the impact was on the front side. There is therefore two possibilities. Either the rickshaw must have gone on the wrong side because deceased Pravinbhai might have lost the control and after colliding with the left front portion of the bus the rickshaw went off the road and then rolling down came to a halt falling into the pit nearby on the northern side or the bus must have been driven on the wrong side and as the rickshaw driver found that it was difficult for him to move further to his left in order to save him and the passengers in the rickshaw, he took the right turn and while proceeding further he collided with the left hand front portion of the bus and then because of violent impact & resultant force the rickshaw went into the pit on the northern side, dashing against one or another place. Now other evidence on record may be examined.

6. When the evidence of Manojbhai Harilal, CW 3, claimant Yakubkhan Mohmedkhan DW 1, and Dr. Chandravadan Harishanker Pandya CW 2, is perused together it appears that Dr. Chandravadan Pandya was proceeding towards the eastern side driving his scooter. He was driving remaining close to the northern border of the road. He was about 2 feet away from northern border. The bus was following him. The bus driver wanted to overtake. He therefore took the bus on the right side and then started to overtake the scooter driven by Dr. Chandravadan Pandya. As per the evidence of Dr. Chandravadan Pandya the bus driver had kept a distance of 3 feet from him on the right side when he was being overtaken. The width of the bus is 8 feet and after the overtaking was over the bus proceeded at a distance and then the incident happened, and within 5 minutes Dr. Chandravadan Pandya reached the scene of incident. From such facts, it appears that the right side of the bus at the time of overtaking the scooter must be at a distance of 13 feet from the northern border of the road meaning thereby the bus driver had gone to his right side (wrong-side) covering the area of about 3 feet. Hence 3 feet portion came to be obstructed by him for the oncoming vehicles. At that time deceased Pravinkumar was coming from the opposite direction driving the rickshaw and he collided on the left front portion of the bus. This shows that the impact point must be virtually on the middle of the road.

7. What are the duties of the driver while overtaking the vehicle proceeding ahead of him or seeing

the vehicle approaching the opposite direction is the next question that arises for consideration. If the driver desires to overtake the vehicle proceeding ahead of him he has to first by any mechanical device available send a message to the driver of the vehicle proceeding ahead of him and thereby convey his intention of overtaking. He must then wait for a signal. After receiving the signal he has to proceed to overtake but bearing in mind the speed of the vehicle being overtaken and the speed at which he is required to drive. Secondly, he has to maintain reasonable distance between his vehicle and the vehicle being overtaken so as to avoid brushing and grazing. He has also to bear in mind that the space available on his right side is sufficient to pass safely and conveniently and that passage is unobstructed. If he finds that the space on the right side is sufficient but that passage is obstructed either because another vehicle is coming from the opposite direction or because of any other reason he should not prefer to overtake even if the driver of the vehicle to be overtaken has given the signal for overtaking. In this case, Dr. Chandravadan Pandya does not say that he had received the signal or a message from the bus driver about his intention to overtake and he did not even give any signal for overtaking. It also appears that rickshaw driven by deceased Pravinkumar was at that time approaching from the opposite direction. Hence the right side passage was not clear and safe for the purpose of overtaking. However, the bus driver overlooking all his aforesaid duties preferred to overtake taking a risk thinking that he would be able to control the situation that might emerge on the road but his judgment did not come true and unfortunate incident happened. He was therefore negligent in driving the bus.

8. If the driver of the vehicle finds that the oncoming vehicle is proceeding ahead towards him overtaking the vehicle and that vehicle is on its wrong side, i.e. his correct side and it is not looking to the distance between his vehicle & oncoming vehicle safe to proceed further at the same speed, it is his duty to apply the brake and slow down the vehicle, and if required to swerve more and more on the left side to the extent possible or any other side found safe. Here in this case, Pravinkumar, the rickshaw driver committed the breach of his such duties. Seeing the bus approaching from the opposite direction which was in the process of overtaking the scooterist (Dr. Chandravadan Pandya) remaining on his correct side and realising that the bus being the obstruction it was unsafe to proceed ahead, Pravinkumar unwisely continued to proceed ahead thinking

that he would be able to find the way but when he found that the mishap was going to happen he feeling puzzled, tried to avert the incident, swerving on his right side riskily instead of swerving more and more on the left side, i.e., southern side, as a result his rickshaw collided with the front left side of the bus and then it went off the road towards north. It then rolled down and came to a halt falling into the pit.

9. When in such manner the incident has happened and the impact point can be located on the middle or very close to the middle of the road, both the drivers can be said to be equally responsible for the incident. The learned Chairman of the Tribunal was, therefore, perfectly right in apportioning the negligence equally on both the drivers. We see no reason to interfere with that finding. The contention advanced in this regard on behalf of both the sides must therefore fail.

10. With regard to the quantum, it is the contention of Mr. Kapadia, the learned advocate that deceased Kirtikumar was carrying on his business in partnership under the name and style, "C.K. Industries" and "Nitesh Trading Company", and was earning Rs. 40,000/= to Rs. 42,000/= per year. He was also paying the income-tax. As per the income-tax assessment orders, Exhibits 66, 70 & 71, the deceased paid the income-tax of Rs. 16,160/= and Rs. 13,000/= relating to the assessment years 1976-77 and 1977-78. The learned Tribunal was therefore not right in assessing the datum figure at Rs. 500/= per month. Considering the income which the deceased showed in the income-tax return, the Tribunal ought to have fixed the amount of dependency which would be much higher than Rs. 500/= per month. It may be stated that the respondents Nos. 1, 2 & 3 do not question the assessment made qua Pratibhaben & Kanakben.

11. When the evidence of Mohanlal the respondent No.1, Kalavatiben the respondent No.2 and Pravinbhai Chunibhai Shah the Accountant (Ex.54) and the abovesaid income-tax returns and assessment orders are perused, what can be deduced is that the income was fluctuating because the partnership firms were at times running in loss. It appears that the partnership firm was also closed few years prior to the incident, but after the closure Kirtikumar was maintaining the respondents Nos. 1 to 3 and his family, by dealing in yarn. Looking to the last return which he submitted to the Income Tax Officer few months prior to the indident it follows that his income was Rs. 42,172/= wherein he was having half-share. It can therefore be assumed that he was

earning Rs. 21,086/= per year and would have also gradually by self-exertion earned more. Hence his income per month can well be assessed at Rs. 2,000/=. He was maintaining his child and wife along with the respondents. He would have spent more for himself and for his family which might have grown by passage of time and therefore the help to the present respondent can be assessed 1/3rd of his income which would be nearer to Rs. 666/-, but to take it to a next hundred figure, the contribution to the respondents can well be assessed at Rs. 700/= per month and per year the same would come to Rs. 8,400/=.

12. Deceased Kirtikumar was aged 28 years at the time of accident and the father of the deceased was aged 56 and the mother of the deceased was aged 48. Considering the span of life to be of 70 years, the deceased would have helped his father and mother at least for 20 years more. Hence the Tribunal is perfectly right in adopting the multiplier of 16. If the yearly contribution is multiplied by 16, the amounts which can be awarded under the head "Loss of dependency" comes to Rs. 1,34,400/=. Over and above such amount, the respondents No. 1 to 3 are also entitled to the conventional amount of Rs. 20,000/= under the head "Loss to the estate of the deceased". In all, therefore, the respondents are entitled to Rs. 1,54,400/= and not Rs. 1,11,000/= awarded by the Tribunal. They are, therefore, entitled to Rs. 43,400/= more together with interest and proportionate costs.

13. What rate of interest should be awarded is also the point raised before us. It is the submission of Mr. Kapadia, that considering the erosion of a rupee value, the interest at the rate of 12% may be awarded. Under Section 171 of Motor Vehicles Act while awarding the compensation, the Tribunal has also to award the interest, but the rate of interest must be, in our view, commensurating with the economic policy adopted by the Government. In other words, the rate of interest must not be more that what is being paid by the banks on fixed deposit. At present, the maximum rate of interest on fixed deposit is 10.5%. Hence the interest cannot be awarded more than that rate. In the case on hand, about 19 years have passed and the rate of interest went high upto 13.5% in 1995 or 1996 and at present it is reduced to the aforesaid rate. The respondents and the appellant who are liable to pay must have earned the interest prevailing at different times and therefore they can be saddled with the interest at the rate of 10% from the date of the petition till realisation on the additional

amount the respondents No. 1 to 3 are found entitled to.

14. Mr. Mehta, the learned advocate representing respondent No.7 contends that the liability of the Insurance Company is as per the policy not more than Rs. 10,000/- per accident, but the Tribunal has fallen into error in holding mis-reading Sec.II-I(i) of the Policy that the liability of the Insurance Company was to the extent of Rs. 50,000/=. The policy is produced at Ex. 52. In the column, "Limits of Liability" no doubt Rs. 50,000/= is mentioned, but it is relating to Section II I (ii) and that relates to the claim regarding damage to the property caused by the use of motor vehicle. The abovestated Section II-I(i) is mentioned but, against that, no amount is mentioned. The learned Judge of the Tribunal has misread the column of "Limits of Liability" and assumed mention of Rs. 50,000/= to be of Section II-I(i) which relates to death or bodily injury to any person caused by the use of the motor vehicle. Here is not the case where compensation because of the damage caused to the property is claimed. Kirtikumar, his wife & daughter died in the accident and to make the loss good compensation is prayed for. Hence, Section II-I(ii) is not applicable. Endorsement No. 13 attached to and forming part of policy, being the relevant clause, has to be borne in mind and that shows that indemnity is made limited to the sum of Rs. 10,000/= in respect of any one person, but subject to the limit of Rs. 50,000/= relating to any numbers of claims arising out of one accident in which vehicle insured is involved. It follows that under the policy the Insurance Company respondent No.7 has accepted the liability to the extent of Rs. 10,000/= in respect of one person, and maximum to Rs. 50,000/=, if several claims arise out of the same accident. The respondent No.7, in this case therefore, is liable to the extent of Rs. 10,000/= with interest thereon and costs in proportion, and not to the extent of the whole of the amounts awarded.

15. On no other ground, further submissions are made by either of the parties. For the aforesaid reasons, the award passed is required to be modified. In the result, the appeal is required to be dismissed, and the cross-objections filed by the respondents will have to be partly allowed, and award will have to be modified, and it is modified to the effect that over and above Rs. 1,11,000/=, already awarded the appellants and respondents No. 4, 5 & 7 shall pay additional amount of Rs. 43,400/= together with interest thereon at the rate of 10% p.a., from the date of the petition till realisation and costs in proportion, with the

clarification that the liability of respondent No.7 will be in all to the extent of Rs. 10,000/= together with interest thereon at the rate of 10% p.a., and costs in proportion.

16. The respondent No.7 has, as stated hereinabove, deposited the amount in excess of its liability. The amount deposited in excess shall be refunded to the respondent No.7, out of the amounts deposited or to be deposited by other parties held liable. The appellant and respondents No. 4 & 5 to deposit the additional amount together with costs and interest within the period of 3 months from today.

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